IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1149/2002

Reserved on.24.8.2007

Decided on.5.9.2007

Ram Singh. **…Petitioner.**

Versus

State of H.P. and others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No*

For the petitioner : **Mr. Janesh Mahajan, Advocate.**

For the respondents **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals for respondents No.1 and 2.**

Mr. Suneet Goel, Advocate for respondent No.3

Rajiv Sharma, J.

A challenge has been laid by the petitioner to the order passed by the Director Consolidation of Holdings dated 16th May, 2002.

The brief facts necessary for the adjudication of the present petition are that on the basis of the statement of respondent No.3, land was partitioned by the Consolidation Officer on 16th July, 1991. The respondent No.3 preferred an appeal before the Settlement Officer against the order dated 16th July, 1991. He had categorically stated in his appeal that he was hard of hearing and never gave statement before the Consolidation Officer that the land be given to other co-sharers from his *Khata*. He has also stated in his grounds of appeal that he was in possession of the land from the time of his fore-father and he was

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No

cultivating the same. The Settlement Officer allowed the appeal on 23.8.1993. The petitioner feeling aggrieved by the order dated 23.8.1993 passed by the Settlement Officer preferred a revision petition under section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 before the Director Consolidation of Holdings. The revision petition was rejected by the Director Consolidation of Holdings on 16.5.2002.

Mr. Janesh Mahajan, Advocate had strenuously argued that the appeal could not be entertained by the Settlement Officer (CH) since the same was barred by limitation. He also contended that once the statement has been given by the respondent No.3 he could not resile from the same.

The learned Advocate General and Mr. Sunit Goel, Advocate had supported the orders passed by the Settlement Officer and Director Consolidation of Holdings.

I have heard the learned counsel for the parties and perused the record.

The respondent No.3 had categorically stated in his appeal preferred before the Settlement Officer that he was hard of hearing and had never given any statement before the Consolidation Officer as recorded on 16.7.1991. There was no occasion for the respondent No.3 to transfer his share to the petitioner without consideration. The name of the respondent No.3 was recorded in the *Jamabandi* as owner of *Khewat* No. 68 and owner to the extent of half share of *khewat* No.65. The respondent No.3 at the time of recording of statement was more than 80 years old and was hard of hearing. It was the duty of the Consolidation Officer also to make the respondent No.3 understand about the ramifications of the order passed by him. The respondent No.3 had stated

in his appeal that he had not given any statement before the Consolidation Officer. The order passed by the Settlement Officer was in accordance with law.

The respondent-State had produced the record. I have perused the record. It is evident from the record that the appeal was filed by the respondent No.3 within the limitation prescribed and thus the submission of Mr. Janesh Mahajan, Advocate that the appeal filed before the Settlement Officer was barred by limitation is untenable. The findings recorded by the Director Consolidation of Holdings are in accordance with law. The Consolidation Officer was required to proceed in accordance with law instead of ordering the partition on the basis of statement made by the respondent No.3. There is neither any jurisdictional error nor any procedural irregularity in the order passed by the Director Consolidation of Holdings.

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

5th September, 2007
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